

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO BAYKEEPER,)	
)	
Plaintiff,)	No. 08-3760 BZ
)	
v.)	ORDER SCHEDULING
)	COURT TRIAL AND
TOWN OF HILLSBOROUGH,)	PRETRIAL MATTERS
)	
Defendant.)	
_____)	

Following the Case Management Conference, **IT IS HEREBY ORDERED** that the Joint Case Management Statement is adopted, except as expressly modified by this Order. It is further **ORDERED** that:

1. DATES

Trial Date: **Monday, 5/3/2010, 5 days**

Pretrial Conference: **Tuesday, 4/13/2010, 4 p.m.**

Last Day to Hear Dispositive Motions: **Wednesday, 2/17/2010**

2. DISCLOSURE AND DISCOVERY

The parties are reminded that a failure to voluntarily disclose information pursuant to Federal Rule of Civil Procedure 26(a) or to supplement disclosures or discovery

1 responses pursuant to Rule 26(e) may result in exclusionary
2 sanctions. Thirty days prior to the close of non-expert
3 discovery, lead counsel for each party shall serve and file a
4 certification that all supplementation has been completed.

5 In the event a discovery dispute arises, **lead counsel** for
6 each party shall meet in person or, if counsel are outside the
7 Bay Area, by telephone and make a good faith effort to resolve
8 their dispute. Exchanging letters or telephone messages about
9 the dispute is insufficient. The Court does not read
10 subsequent positioning letters; parties shall instead make a
11 contemporaneous record of their meeting using a tape recorder
12 or a court reporter.

13 In the event they cannot resolve their dispute, the
14 parties must participate in a telephone conference with the
15 Court **before** filing any discovery motions or other papers.
16 The party seeking discovery shall request a conference in a
17 letter filed electronically not exceeding two pages (with no
18 attachments) which briefly explains the nature of the action
19 and the issues in dispute. Other parties shall reply in
20 similar fashion within two days of receiving the letter
21 requesting the conference. The Court will contact the parties
22 to schedule the conference.

23 3. MOTIONS

24 Consult Civil Local Rules 7-1 through 7-5 and this
25 Court's standing orders regarding motion practice. Motions
26 for **summary judgment** shall be accompanied by a statement of
27 the material facts not in dispute supported by citations to
28 admissible evidence. The parties shall file a joint statement

1 of undisputed facts where possible. If the parties are unable
2 to reach complete agreement after meeting and conferring, they
3 shall file a joint statement of the undisputed facts about
4 which they do agree. Any party may then file a separate
5 statement of the additional facts that the party contends are
6 undisputed. A party who without substantial justification
7 contends that a fact is in dispute is subject to sanctions.

8 If plaintiff intends to file a cross-motion for summary
9 judgment, plaintiff shall file its motion in conjunction with
10 its opposition to defendant's motion.

11 In addition to **lodging** a Chambers copy of all papers, a
12 copy of all briefs shall be e-mailed in WordPerfect or Word
13 format to the following address: bzpo@cand.uscourts.gov

14 4. SETTLEMENT

15 This case is referred for assignment to a Magistrate
16 Judge to conduct a settlement conference in September or
17 October of 2009. Counsel will be contacted by that judge's
18 chambers with a date and time for the conference.

19 5. PRETRIAL CONFERENCE

20 Not less than thirty days prior to the date of the
21 pretrial conference, the parties shall meet and take all steps
22 necessary to fulfill the requirements of this Order.

23 Not less than twenty-one days prior to the pretrial
24 conference, the parties shall: (1) serve and file a joint
25 pretrial statement, containing the information listed in
26 **Attachment 1**, and a proposed pretrial order; (2) serve and
27 file trial briefs, Daubert motions, proposed findings of fact
28 and conclusions of law, and statements designating excerpts

1 from discovery that will be offered at trial (specifying the
2 witness and page and line references); (3) exchange exhibits,
3 agree on and number a joint set of exhibits and number
4 separately those exhibits to which the parties cannot agree;
5 (4) deliver all marked trial exhibits directly to the
6 courtroom clerk, Ms. Voltz; (5) deliver one extra set of all
7 marked exhibits directly to Chambers; and (6) submit all
8 exhibits in three-ring binders. Each exhibit shall be marked
9 with an exhibit label as contained in **Attachment 2**. The
10 exhibits shall also be separated with correctly marked side
11 tabs so that they are easy to find.

12 No party shall be permitted to call any witness or offer
13 any exhibit in its case in chief that is not disclosed at
14 pretrial, without leave of Court and for good cause.

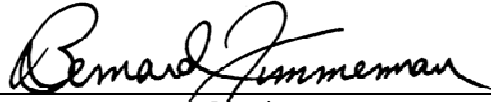
15 Lead trial counsel for each party shall meet and confer
16 in an effort to resolve all disputes regarding anticipated
17 testimony, witnesses and exhibits. Not less than eleven days
18 prior to the pretrial conference, the parties shall serve and
19 file any objections to witnesses or exhibits or to the
20 qualifications of an expert witness, and any oppositions to
21 Daubert motions. There shall be no replies.

22 A copy of all pretrial submissions, except for exhibits,
23 shall be e-mailed in WordPerfect or Word format to the
24 following address: bzpo@cand.uscourts.gov

25 At the time of filing the original with the Clerk's
26 Office, two copies of all documents (but only one copy of the
27 exhibits) shall be delivered directly to Chambers (Room 15-
28 6688). Chambers' copies of all pretrial documents shall be

three-hole punched at the side, suitable for insertion into
standard, three-ring binders.

Dated: January 13, 2009

A handwritten signature in black ink, reading "Bernard Zimmerman". The signature is written in a cursive style with a large, stylized 'B' and 'Z'.

Bernard Zimmerman
United States Magistrate Judge

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ATTACHMENT 1

The parties shall file a joint pretrial conference statement containing the following information:

(1) The Action.

(A) Substance of the Action. A brief description of the substance of claims and defenses which remain to be decided.

(B) Relief Prayed. A detailed statement of each party's position on the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of those damages.

(2) The Factual Basis of the Action.

(A) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.

(B) Disputed Factual Issues. A plain and concise statement of all disputed factual issues which remain to be decided.

(C) Agreed Statement. A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.

(D) Stipulations. A statement of stipulations requested or proposed for pretrial or trial purposes.

(3) Trial Preparation.

A brief description of the efforts the parties have

made to resolve disputes over anticipated testimony, exhibits and witnesses.

(A) Witnesses to be Called. In lieu of FRCP 26(a)(3)(A), a list of all witnesses likely to be called at trial, other than solely for impeachment or rebuttal, together with a brief statement following each name describing the substance of the testimony to be given.

(B) Estimate of Trial Time. An estimate of the number of court days needed for the presentation of each party's case, indicating possible reductions in time through proposed stipulations, agreed statements of facts, or expedited means of presenting testimony and exhibits.

(C) Use of Discovery Responses. In lieu of FRCP 26(a)(3)(B), cite possible presentation at trial of evidence, other than solely for impeachment or rebuttal, through use of excerpts from depositions, from interrogatory answers, or from responses to requests for admission. Counsel shall state any objections to use of these materials and that counsel has conferred respecting such objections.

(D) Further Discovery or Motions. A statement of all remaining motions, including Daubert motions.

(4) Trial Alternatives and Options.

(A) Settlement Discussion. A statement summarizing the status of settlement negotiations and indicating whether further negotiations are likely to be productive.

(B) Amendments, Dismissals. A statement of requested or

1 proposed amendments to
2 pleadings or dismissals of
parties, claims or defenses.

3 (C) Bifurcation, Separate Trial of
4 Issues. A statement of whether
bifurcation or a separate
5 trial of specific issues is
feasible and desired.

6 (5) **Miscellaneous.**

7 Any other subjects relevant to the trial of the action,
8 or material to its just, speedy and inexpensive
determination.

ATTACHMENT 2

USDC
Case No. CV08-03760 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-03760 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-03760 BZ
PLNTF Exhibit No. _____

Date Entered _____

Signature _____

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PLNTF Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-03760 BZ
DEFT Exhibit No. _____

Date Entered _____

Signature _____

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Signature _____
